

powers conferred on it under paragraph (15) of the same Schedule.

The facts which gave rise to this morning's hearing are not in dispute. I will therefore recite the particulars of the claim which has been made by the Finance and Economics Committee for an Order for condemnation of certain gold coins (the facts of which were accepted by Mr. Benest for the alleged importer, Mr. Basil Parker Andrew):-

- "1. That Article 22(b) of the Customs and Excise (General Provisions) (Jersey) Law, 1972 (Recueil des Lois 1970 - 1972 p.451) provides that if any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, those goods shall be liable to forfeiture.
2. That Article 3(1)(a) of the Import and Export (Control) (Jersey) Law, 1946 (Recueil des Lois Tome VII, p.338) provides that if any goods are imported into Jersey in contravention of an order made under the said Law, the goods shall be deemed to be prohibited goods and shall be forfeited.
3. That the Import and Export (Control) (Jersey) Order, 1982 (R & O 7074) is an order made under the said Law of 1946.
4. That the said Order has for effect to restrict the importation of goods into the Island, save under, and in accordance with the terms of a licence granted by the Finance and Economics Committee.
5. That on 28th July, 1982, the Finance and Economics Committee granted an Open General Import Licence the effect of which was to specify classes of goods which could properly be imported into Jersey and classes of goods to which a prohibition applied.
6. That on 5th November, 1986, by Amendment No. 15 to the said Licence, the Finance and Economics Committee (reflecting United Kingdom legislation on the point) placed a prohibition upon the importation into Jersey from outside the European Community of gold

coins minted in or after 1961 in the Republic of South Africa.

7. That in the premises, gold coins of the said class imported into Jersey are liable to be condemned as forfeited both under the Import and Export (Control) (Jersey) Law, 1946, and under the Customs and Excise (General Provisions) (Jersey) Law, 1972.
8. That the First Schedule to the said Law of 1972 prescribes the material procedure in respect of the forfeiture and condemnation of goods.
9. That on 21st November, 1987, a package containing 49 gold coins of the said class (namely Krugerrands of varying weights to an estimated total value of £6,000.00) arrived at Jersey Airport. The said coins had been consigned from the Société de Banque Suisse, Geneva, Switzerland, to National Westminster Bank Plc, 16 Library Place, St. Helier.
10. That in the premises hereof the said coins were deemed to be prohibited goods and were seized as liable to forfeiture.
11. That pursuant to paragraphs (1) and (2) of the First Schedule to the said Law of 1972 referred to at paragraph 8 hereof, a Notice of Seizure was sent to the said National Westminster Bank at its said address on 23rd November, 1987.
12. That pursuant to paragraph (3) of the First Schedule to the said Law of 1972 referred to at paragraph 8 hereof, on 22nd December, 1987 a notice of claim was lodged by Advocate F.J. Benest on behalf of the owner of the coins, Mr. Basil Parker Andrew of P.O. Box 496, Francistown, Botswana.
13. That in compliance with the direction given at paragraph (6) of the First Schedule to the said Law of 1972 referred to at paragraph 8 hereof, the Plaintiff prays:-

- (a) that pursuant to paragraph (6) of the said First Schedule, the said gold coins be condemned as forfeited;
- (b) that the Finance and Economics Committee be awarded the costs of the present action".

As I have said, that statement of facts was not disputed by Mr. Benest for the claimant. He seeks an exercise of discretion by this Court before the Order sought by the Finance and Economics Committee is made.

There is a connection between the two laws which appears in Article 5A of the Import and Export (Control) (Jersey) Law, 1946. This Article is a consequential amendment to the 1946 Law created by virtue of the Second Schedule to the 1972 Law. It is in the following terms:-

"The provisions of the Customs and Excise (General Provisions) (Jersey) Law, 1972, shall apply to the import, export, warehousing, movement and entry of goods under this Law as if they were goods subject to a duty of customs".

This nexus is blamed for the present proceedings being drawn under the Customs and Excise (General Provisions) (Jersey) Law, 1972.

The position is that the claimant caused to be imported through Switzerland, a number of Krugerrands which were prohibited and could only be imported under licence. As the importation was prohibited, it was not possible for the Committee to issue a licence. There was some correspondence between Mr. Benest and the Agent of the Impôts. It was suggested by Mr. Benest that he drew the attention of the Agent to an affidavit sworn by Miss Susan Blasby, who was employed as an Investment Officer at the National Westminster Bank, Library Place. Mr. Benest this morning suggested to me that what he meant by a brief reference in his letter dated the 1st February to which I shall now refer, is that his client could have had the gold coins returned to the Swiss Bank.

What Mr. Benest actually said in his letter to the Agent of the Impôts, dated the 1st February, 1988, is this:

"I do not believe that the evidence that I can produce is likely to be impugned in a Court of law, and I trust that the present situation may be resolved. I confirm that the coins were an investment and my client is merely concerned to recover their value".

However, as Mr. Whelan pointed out, it would not be possible to transfer the coins to the claimant because of the prohibition on anyone's holding them without a licence to import them and that licence cannot be given. The Committee now comes before me and asks for a condemnation order. It does so under the provisions of paragraph (6) of the First Schedule of the 1972 Law, which is in the following terms:-

"(6) Where notice of claim in respect of any thing is duly given in accordance with the foregoing provisions of this Schedule" - and Notice was given in this case by Mr. Benest on behalf of the importer - "the Committee shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture the court shall condemn it as forfeited".

It is relevant at this stage to recite paragraph (15) of the same Schedule:

"(15) Where any thing has been seized as liable to forfeiture the Committee may at any time if it thinks fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited -

(a) deliver it up to any claimant upon his paying to the Committee such sum as it thinks proper, being a sum not exceeding that which in its opinion represents the value of the thing, including any duty or tax chargeable thereon which has not been paid; or

(b) if the thing seized is a living creature or is in the opinion of the Committee of a perishable nature, sell or destroy it".

Sub-paragraph (b) is not relevant to the present case. Mr. Benest concedes that he is not able to contravert the point made by Mr. Whelan for the Committee that this Court, in exercising the powers conferred upon it to order the condemned goods to be forfeited, does not have a discretion. He cannot find a case to say that the authority relied on by Mr. Whelan, namely De Keyser -v- British Railway Traffic and Electric Company Limited (1936) 1KB 224 was wrongly decided. Indeed, that case, although it is not mentioned in Halsbury, says the same thing. Halsbury (4th edition) - and I quote from Volume 44 - Statutory Interpretation, at paragraph 932 says this:

"Whether exercise of statutory powers is obligatory or permissive.

The question frequently arises whether a provision by which powers were conferred is of an obligatory, or merely permissive, character, that is to say whether it is to be taken as requiring, or merely authorising, the exercise of those powers.

The answer to this question must depend primarily on the language of the particular enactment, Parliament being understood to have intended a duty in cases where it has used words of an imperative character such as "shall" or "shall and may", and a discretion if the words are on their face merely permissive such as "may", and "it shall be lawful" and "shall be empowered". Qualifying words in the provision may result in permissive language being construed as mandatory".

Dealing with the narrow point first, it seems to me that I have no discretion. Following English authority, the wording of paragraph (6) is quite clear and if the procedure has been properly carried out I am obliged to issue the order sought by Mr. Whelan. However, Mr. Benest says that before the Committee exercised its powers under paragraph (6) which it had to do (it was mandatory) although there is no time limit attached to when it has to seek an Order, it should have applied its mind to its powers which are conferred on it under paragraph (15) of the Schedule, that is to say, it should have considered whether, under the circumstances, provided that the claimant paid some money, the Krugerrands might be returned to him. However, as

Mr. Whelan rightly said, the Committee could not have done that because it would not have been right to hand over Krugerrands to someone who could not have a lawful title to them because no licence could have been given to them as prohibited goods. That is the short answer to that submission.

Mr. Benest in the paragraph to which I have referred in his letter to the Agent of the Impôts dated the 1st February, 1988, wished me to read into that paragraph the suggestion that it would have been sufficient for the purposes of the claimant if the Krugerrands were sent back to the Swiss Bank in London. There are two points that I must make clear. First, nowhere can I find in the correspondence a precise request from Mr. Benest to that effect. Indeed, nowhere in the correspondence is there any reference to paragraph (15) of the First Schedule. In relation to the suggestion that the Committee were required by law to consider paragraph (15), there is no requirement in the law for them to do so.

Was the Committee therefore, I have to ask myself, in full possession of the facts which would have enabled it to consider Article (15) if their minds had been directed to it? Clearly their minds were not directed to it either by the Agent of the Impôts, nor by the claimant's advocate, however, in a report dated the 22nd February, 1988, to the plaintiff, the facts as claimed by Mr. Andrew were fully set out and the Committee was appraised of the details which were put before me this morning. It is quite true that the Committee were not specifically asked to consider Article (15) of the Schedule, but to my mind that Article exists as a discretionary power. It does not require the Committee to have regard to it before it exercises its mandatory power under paragraph (6). Paragraph (15) allows it to exercise its discretionary power at any time and so, having decided to ask for an order - as it must do if an order is to be made under paragraph (6) the Committee has no power not to set the matter in motion.

Mr. Benest was therefore wrong when he said that we must consider paragraph (15) because the Committee is obliged to consider it before it decides to commence proceedings. There is no time limit and if it wished for the Court to consider the requirement of paragraph (15), that is discretionary. I cannot say that the Committee acted wrongly in proceeding under the mandatory requirements of paragraph (6) without specifically

directing its mind to paragraph (15) which is totally discretionary and therefore I cannot accede to Mr. Benest's argument that I have a discretion to exercise - had I accepted his argument I would have given a mandatory order, however, I would have asked the Committee not to put it into effect until it had considered paragraph (15).

As Mr. Whelan has said, this is not a question of my being asked to review the Committee's decision. It is a question of my being asked to interpret a statutory provision. I find that that part of the statutory provision is mandatory. I have no discretion when a condemnation order is asked for under the statute and I accordingly make the order sought. I further order that the costs of the application will be paid by your client, Mr. Benest.

Authorities referred to:

De Keyser -v- British Railway Traffic and Electric Company Limited (1936)
1KB 224.

Western Fish Products Ltd -v- Penwith District Council et al (1981)
2 All ER 204.

Sayers -v- Briggs and Co (1964) JJ 399 at 401.

Halsbury (4th edition), Volume 44 on Statutory Interpretation at paragraph 932.